THE "AUGUST 8TH" "AUGUST 8TH" (OWNERS) v. COASTAS BACHAS

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) October 16, 1980]

[Singapore — Civil Appeal No. 7 of 1980]

Practice and Procedure — Admiralty action — Whether O. 14 procedure available — R.S.C., 1970, O. 14 r. 1.

Shipping Law — O. 14 procedure available to plaintiff in admiralty action.

This was an appeal against the decision of Choor Singh J. ([1980] 2 M.L.J. 179). The sole question before the court was whether or not Order 14 procedure was available to the plaintiff in an Admiralty action *in rem.*

Held, dismissing the appeal: on the plain reading of Order 14 rule 1, a plaintiff in an Admiralty action, whether *in personam* or *in rem,* can avail himself of its provisions.

COURT OF APPEAL.

P. Selvaduray for the appellants.

Haridass Ajaib for the plaintiff.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): On January 13, 1978 the respondent issued a writ in an Admiralty action *in rem* claiming wages and other emoluments due to him together with disbursements made by him as master of the motor "August 8th". The appellants entered appearance on February 2, 1978. The respondent then took out an Order 14 application for summary judgment.

The application was heard by the Registrar who gave leave to the appellants to defend the action on condition that the appellants provided security for the sum of $95,909.18 within 14 days failing which the respondent was to be at liberty to enter final judgment against the appellants for the sum claimed in the writ. The appellants failed to comply with the order of the Registrar and judgment was entered for the respondent against them on July 31, 1978.

On August 8, 1978 the appellants filed a motion to set aside the judgment entered against them on the ground, *inter alia,* that the Registrar had no power in an Admiralty action *in rem* to hear an application for summary judgment under Order 14 of the Rules of the Supreme Court, 1970 and to make any orders thereon. The motion was dismissed by the High Court and the appellants now appeal.

The sole question before us is whether or not Order 14 procedure is available to a plaintiff in an Admiralty action *in rem.* Order 14 rule 1 reads as follows:—

"1.—(1) Where in an action to which this Rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the court for judgment against that defendant.

(2) Subject to paragraph (3), this Rule applies to every action begun by writ other than one which includes —

(a) a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; or

(b) a claim by the plaintiff based on an allegation of fraud.

(3) This Order shall not apply to an action to which Order 81 applies."

The corresponding provision in England is Order 14 rule 1 of the Rules of the Supreme Court, 1965 which reads as follows:—

"1.—(1) Where in an action to which this rule applies a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, that plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the court for judgment against that defendant.

(2) Subject to paragraph (3), this rule applies to every action begun by writ in the Queen's Bench Division (including the Admiralty Court) or the Chancery Division other than —

(a) an action which includes a claim by the plaintiff for libel, slander, malicious prosecution, false imprisonment or seduction,

(b) an action which includes a claim by the plaintiff based on an allegation of fraud, or

(c) an Admiralty action in rem.

(3) This Order shall not apply to an action to which Order 86 applies."

The appellants contend that our Order 14 procedure does not apply to an Admiralty action *in rem* although it is an action begun by writ. They rely on the fact that in England it was the settled practice that in Admiralty actions the procedure for summary judgment provided by the English Order 14 is not applicable until rule 1(2) of that Order was recently amended. Prior to the recent amendment the English Order 14 rule 1(2) did not contain the words "(including the Admiralty Court)" and "(c) an Admiralty action *in rem*"."

We are unable to accept the appellants' contention. In our judgment on a plain reading of our Order 14 rule 1, a plaintiff in an Admiralty action, whether *in personam* or *in rem,* can avail himself of its provisions. Rule 1 "applies to every action begun by writ" other than one which includes a claim referred to in rule 1(2)(a) and (b) and rule 1(3). Under Order 70 rule 2 an Admiralty action *in rem* must be begun by writ and is therefore an action to which Order 14 rule 1 applies. There is no provision in Order 70, which is the order which applies to Admiralty causes and matters, which provides for summary judgment in Admiralty causes and matters. In contrast Order 70 rule 20, which provides the procedure in an action *in rem* for obtaining judgment in default of appearance or defence, specifically provides in subrule (10) that "Order 13 and Order 19 (except rule 1) shall not apply to actions *in rem*". Order 13 is the order which provides the procedure for obtaining judgment in default of appearance to a writ and Order 19 is the order which provides the procedure for obtaining judgment in default of pleadings in an action begun by writ.

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Rodyk & Davidson; Netto, Low & Partners.*